

SUPREME COURT OF INDIA

State of West Bengal

Vs.

Sri Pronab Kr. Sur

C.A.Nos.805-806 of 1999

(K.G. Balakrishnan and P. Venkatarama Reddi, JJ.)

04.04.2003

JUDGMENT

P. VENKATARAMA REDDI, J.

1. Aggrieved by the common order dated August 5, 1998 passed by the Division Bench of High Court at Calcutta in APO No. 21 of 1994 (related to Company Petition No. 90 of 1992) and GA No. 811 of 1997 (arising out of Writ Petition No. 383 of 1997), the present appeals have been preferred by the State of West Bengal after obtaining special leave. The order in question has been purportedly passed in exercise of two jurisdictions - one under the Companies Act and the other under Writ jurisdiction. In sum and substance, the High Court set aside the order of the State Government rejecting the 2nd Respondent Company's application for exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act (hereinafter referred to as the 'ULC Act'), directed the Special Officer, appointed by the Court to transfer and hand over the vacant possession of 300 cottahs of land declared surplus under the ULC Act to the 6th respondent on receipt of Rs. 390 crores and laid down the modalities of utilization of the said amount for the revival of the 2nd Respondent-Company.

2. The case has a long history. Certain essential facts need narration to come to the grips of the issue involved. In the year 1976, the 2nd Respondent by name Sur Enamel & Stamping Works (Private) Ltd. (hereafter referred to as 'Company'), filed a declaration under the ULC Act. In the year 1991, the Company totally suspended its operations on account of financial and marketing problems. It may be stated that the assets of the Company viz. the factory building, plant and machinery, contiguous land etc. were mortgaged to United Bank of India through equitable mortgage and the Bank filed a suit in the year 1992 for recovery of money by enforcing the mortgage. The Company filed an application under Section 20 ULC Act on 18.6.1991 seeking exemption of excess vacant land held by it on the ground that part of the vacant land had to be necessarily sold for discharging the dues and for revival of the company. As the things stood thus, a creditor of the Company by name Eastern Coal Agency, filed Company Petition No. 90 of 1992 in the High Court of Calcutta for winding up the Company on the ground of its inability to discharge the debts. The said petition was admitted on 16th March, 1992. However, further proceedings including advertisement were stayed subject to the condition of the Company paying the amount due to the creditor in instalments. The instalments could not be paid by the Company as directed. While so, the company came forward with a 'scheme application' purportedly under Sections 391(1) & 391(6) of the Companies' Act. The scheme envisaged payment being made to the creditors by sale of a portion of the Company's land measuring 20 bighas. The learned Judge dealing with the Company Petition

rejected the application by an order dated 22.12.1993 on the ground that the property was mortgaged to the Bank and the scheme was not feasible. Simultaneously, directions were given for advertisement of the winding up petition. At this stage, we may mention that this order of the learned Company Judge has been wrongly referred to in the pleadings of both the parties as an order directing winding up of the Company. Moreover, in the judgment under appeal, the learned Judges wrongly assumed that the order dated 22.12.1993 was passed on the application of one of the creditors to sell the property. We would like to clarify that the question of sale did not arise at that stage because the winding up petition was still under adjudication. We have already indicated the nature of application filed before the Company Judge, on a perusal of the original record of the High Court.

3. Against the order dated 22.12.1993 passed in the Company Application, an appeal was preferred before the Division Bench, which is A.P.O. No. 21 of 1994. The Company placed before the Division Bench an offer from the 6th respondent, namely, Chatterjee Management Services (P) Ltd. (hereinafter referred to as the 'CMS Ltd.') to purchase 15 bighas of vacant land at the consolidated price of Rs. 3.90 crores provided it was transferred free from all charges and encumbrances and necessary permissions/approvals from the Court, secured creditors and the Urban Ceiling authorities were obtained. The Company prayed for confirmation of proposed sale of approximately 20,000 square metres to C.M.S. Ltd. The Division Bench of the High Court noted that according to the proposal of C.M.S. Ltd., the dues to the Bank and other creditors will be cleared and arrears of salaries to workmen will be paid and the balance of about one crore could be utilized by the Company and C.M.S. Ltd. were accepted by the Division Bench by an order dated 16.1.1996. the learned Judges observed :

"Considering the facts and circumstances of the case we accept and confirm the offer of Chatterjee Management Services (P) Ltd. in view of the fact that the State is facing acute unemployment problem and here is an industrialist who has come forward with an offer, which appears to be a very much lucrative and which will serve the interest of the workmen as also to liquidate the creditor's dues, namely, Bank's dues, and when all the interested parties supported this without any qualification, this is also in public interest to accept the said offer."

4. On 4.2.1997, the Division Bench passed a further order in the company Appeal. The Court, having noted that CMS Ltd. had approached the State Government for getting clearance under ULC Act, directed the State Government to pass appropriate orders in that behalf.

5. Taking the cue from the proceedings in Company Appeal, the 2nd Respondent Company filed writ Petition No. 383 of 1997 challenging the notice issued under Section 10(5) of the ULC Act and the subsequent notice issued by the Calcutta Improvement Trust. Direction was sought to restrain the authorities concerned from giving effect to the 'vesting order'. By that time, the application filed under Section 20 of the ULC Act was rejected by the State Government by an order dated 6.2.1995. Thereafter, various steps were taken under the ULC Act. The excess vacant land was finally determined as 19,904 sq. meters. Notification under Section 10(3) was published on 24.7.1995. Notice under Section 10(5) calling upon the 2nd Respondent to hand over the possession of the vested land was given on 15.9.1995. On 2.11.1995, the possession of the vested land was taken over according to the appellants though the 2nd Respondent denies the same. Reverting back to the Writ Petition filed in February, 1997, it appears that the learned Single Judge while directing the Writ Petition to be posted for orders after two weeks, declined to grant interim relief on the ground that no urgency was made out. Aggrieved by this order dated 24.2.1997, the company preferred Letters Patent Appeal which is GA No. 811 of 1997. It appears that the writ petition was assigned for

disposal to the Bench hearing the Company Appeal.

6. On 15.4.1997, the Division Bench passed an order in A.P.O. No. 21 of 1994 as well as GA No. 811 of 1997 directing the State Government to pass a fresh order under Section 20 on a fresh application filed by the 2nd Respondent Company. The State Government was required to take decision within four weeks from the date of receipt of application. The High Court indicated that the fresh decision should be taken according to law, keeping in view the judgment of the Supreme Court in *T.R. Thandur v. Union of India [JT 1996(4) SC 14]* and in the light of the 'Project Report' submitted before the Court pursuant to the offer of CMS Ltd. and also the existing State policy. The High Court observed that "it is expected that the Government shall consider and give due weight to the project which Mr. Mukherjee's client wants to implement in the light of the policy decision already taken by the State Government and the decision of the Supreme Court mentioned above." The State Government, on consideration of the representation, passed a speaking order rejecting the application under Section 20 on 30.7.1997. The Government referred to the decision of the Supreme Court and proceeded to consider the question from the angle of undue hardship and public interest. In doing so, the State Government placed strong reliance on certain guidelines issued by the State Government in regard to the surplus land held by sick industrial units. The Government was also of the view that, on account of vesting order, the grant of exemption would not be in accordance with law. This order passed under the ULC Act had created a stalemate in regard to implementation of the proposals submitted by CMS Ltd. which received the approval of Division Bench. The Division Bench heard arguments on the legality of the order passed by the State Government refusing the exemption and rendered the impugned judgment in the two matters before it. That is how the SLPs came to be filed by the State, leading to these appeals. This Court, passed an interim order on 14.02.2000 directing the Official Liquidator, Calcutta High Court to make an inventory of all the assets and to ensure and safeguard the said assets lying at 21, Sil Lane and 24 Christopher Road, Calcutta and to submit a report.

7. The findings arrived at and the directions issued by the High Court in the judgment under appeal are to be noted. The High Court was of the view that the sale of vacant land, not required for the purpose of the company in favour of CMS Ltd., would not only serve the company's interest but also as well as the workmen's dues could be cleared and the Company will be able to restart the industry thereby providing employment to a large number of workers, while at the same time, CMS Ltd. would be setting up a software development park which is 'unique in its character'. Referring to the decision of this Court in *Thandur's case [(1996) JT (4)]*, the High Court observed that the exemption under U.L.C. Act could be lawfully granted even for the purpose of transferring the land to revive the industry. The High Court did not agree with the stand taken by the State Government that the power of exemption cannot be exercised after vesting of the land. The High Court pointed out that in any case the possession of the land was not taken and, therefore, the Company was still 'holding' the land. The High Court then questioned the competence of the ULC authority to declare the property as vested in the State and to take possession, without obtaining leave of the Court when proceedings under the companies Act were pending. The High Court made a comment that the law laid down by the Supreme Court in Thandur's case (supra) was 'simply ignored' by the Government in refusing the exemption. The further comment was that the proposal given by CMS Ltd. was not kept in view and the Government chose to follow "some unknown existing guidelines". The High Court then held as follows :

"... Accordingly, in our view, it was a fit and a proper case where exemption ought to have been granted and the exception ought to have been granted and the exemption was rejected on an existing Government policy without disclosing what is the policy and on the contrary the policy of the

Government is to further the interest of the public and to industrialise the State to mitigate the hardship of the unemployed people. The reasons given herein cannot stand and accordingly, this Court has no other option but to hold that the property stood exempted as it fulfills all the conditions laid down in Section 20 and it also fulfils the decision of the Supreme Court in the case of T.R. Thandur (supra) and it also ensures the social and economic justice..."

8. The High Court ultimately held that the twin considerations of undue hardship and public interest are satisfied in the instant case.

9. Coming to the operative part of the order, the High Court reiterated the confirmation of sale by its order dated 16.1.1996 in favour of CMS Ltd. for a consideration of Rs. 3.90 crores. The company was permitted to sell 300 *cottahs* of land delineated in the annexed Plan for the sale price of Rs. 3.90 crores. Out of the said amount, the Company (appellant before the High Court) was directed to pay Rs. 1.80 crores to the United Bank of India as per the settlement terms, 60 lakhs to the workmen and the actual amount payable to Eastern Coal Agency. The Company was also required to pay the statutory dues and taxes. The balance amount was directed to be utilized for rehabilitation of the Company. The time schedule for payment of the amount by CMS Ltd. was set out for the purpose of implementation of the order and two advocates were appointed as Special Officers, whose fee was liable to be paid by the Company. The concerned authorities were directed to register the Deed of Transfer without insisting on no objection certificate under Section 269 U.D.(I) of I.T. Act or no objection certificate from the U.L.C. authorities. The Municipal officials were directed not to insist on no objection certificate from the Urban Land Ceiling authorities. It was also declared that on payment of 3.90 crores, as per the time schedule, the ownership and interest of the Company in the property shall absolutely vest in CMS Ltd. free from all encumbrances and lien and the nominated Special Officer should handover the possession to CMS Ltd. The concluding part of the order is also important :

"By this order all proceedings including the writ application, writ appeals filed against the Urban Land Ceiling Authorities as well as Liquidation Proceedings and the appeal filed in connection therewith stands finally disposed of."

10. With reference to the findings and directions of the High Court in regard to transfer of vacant land to CMS Ltd. and on the issue of grant of exemption under Section 20 of U.L.C. Act, the learned senior counsel appearing for the appellant-State criticized the judgment on various counts. It is submitted that there are definite guidelines for disposal of and dealing with the excess vacant lands under the ULC Act held by the sick industrial units and such guidelines have been evolved primarily for the purpose of rehabilitation of the sick unit. If the application is made in terms of the guidelines, a high powered committee will deal with the matter and monitor the process of revival. Such orders were issued by the Government on 22nd December, 1989 and 26th November, 1992. The latest order on the subject is dated 6th January, 1998 (which is subsequent to the rejection order of Government). The Respondent-Company was repeatedly advised to follow those guidelines. The Company was well aware of those orders of the Government as seen from the pleadings and annexed documents before the High Court. They were very much available when the case was heard by the High Court, yet the High Court described them as 'unknown guidelines'. It is pointed out that the Company did not come forward with any concrete rehabilitation package. The learned senior counsel further contended that the view of the High Court that Company Court's permission was required to proceed under ULC Act is opposed to Section 42 of the Act. The learned counsel then commented that the High Court went wrong in holding that the ratio of the decision in Thandur's case (supra) was not kept in view. It is also contended that the High Court proceeded on a wrong

assumption that the possession of the excess land was not taken over. Above all, it is submitted that the High Court exceeded its jurisdiction in declaring that the land in question stood exempted from the purview of ULC Act on its own conception of public interest and undue hardship and such approach cannot be legally sustained. Moreover, it is argued that the acceptance of offer of CMS Ltd. and the 'confirmation of sale' in favour of that party is without jurisdiction and against the accepted norms governing the sale of properties. The directions given to various authorities were in the teeth of statutory provisions.

11. The learned counsel for the 2nd Respondent-Company contended that the exemption was arbitrarily refused, the observations made by the Government that there was no undue hardship and public interest are perverse and equally so the finding that the exemption application cannot be entertained after the vesting order. It is submitted that the applications for exemption were filed even before the vesting order was issued and the latest application filed pursuant to the order of the Court was only in continuation of the previous applications. It is asserted that the actual possession of the land has not been taken over inasmuch as the orders of the ULC authorities were stayed by the High Court. It is further submitted that the reasons given by the High Court for the grant of exemption are well founded and the High Court had ample jurisdiction to approve the scheme submitted by the company pending the appeal. Reliance has been placed on Para 20 of the decision in *Muthulakshmi Achi v. Meenakshi Achi & ors. [(1993) Suppl. 4SCC 658]* wherein direction to grant exemption was issued on the peculiar facts of the case.

12. Two other legal submissions have been made by the learned counsel for the Company which, in our view, are liable to be rejected outright. These extreme contentions should not cloud the real issue for consideration when the matter goes back to High Court. Hence we consider it appropriate to deal with these contentions at this stage itself. Firstly, it is submitted that ULC Act was enacted by the Parliament in exercise of its legislative powers under Article 252 pursuant to the resolutions passed by the Houses of Legislatures of various States including West Bengal. The Parliament repealed the said Act by the Urban Land (Ceiling and Regulation) repeal Act, 1999 and the repeal *ipso facto* brings about the result of the Act ceasing to apply in relation to State of West Bengal. This contention cannot be sustained in view of the mandate of Clause (2) of Article 252 which reads :

"Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State."

13. The words 'adopted in like manner' are significant. Just as the ULC Act passed by Parliament became operative in State of West Bengal by virtue of the adoption of that Act by means of a resolution passed by the Legislature of West Bengal State, the repeal will be effective only if that State passed another resolution approving and adopting the repelling Act. This legal position is explicitly made clear in the repealing Act itself. In sub-sections (2) and (3) of Section 1, it is enjoined that the repealing Act shall apply to such other State which adopted the same by resolution passed in that behalf under Clause (2) of Article 252. Undisputedly, no such resolution has been passed by the State of West Bengal so far. Hence the repeal Act has no application in relation to that State. In that view, there is not need to consider the effect of saving provision in the repeal Act, which *prima facie*, appears to be another hurdle for the respondent.

14. Another point urged by the learned counsel for the Respondent - Company is that the land and other property of the Company had been mortgaged to the Bank and, therefore, it is not free from

encumbrances, in which case Section 10(3) of the Act has no application. Section 10(3) of the ULC Act provides for vesting of the excess vacant land (referred to in the notification published under sub-section 1) in the State Government free from all encumbrances with effect from the specific date. The learned counsel submits that if the excess land was subject to encumbrances, Section 10(3) has no application and the question of vesting does not arise. This contention is absolutely devoid of merit and the interpretation which is sought to be given by the learned counsel distorts the meaning and purpose of Section 10(3). It is precisely for the purpose of freeing the land of all encumbrances, so as to facilitate absolute vesting, that sub-section (3) has been enacted. The factum of existence of encumbrances cannot be pressed into service by the land-holder to prevent the operation of statutory vesting.

15. We now come to the crux of the issue arising in the case : It is evident from the narration of facts that the offer made and the proposals submitted by the 6th Respondent (CMS Ltd.) formed the basis of the order passed by the Division Bench of the High Court. It cannot be gainsaid that to a substantial extent, the said proposals which received the imprimatur of the Court, largely influenced the Division Bench in holding that the Company was entitled to get exemption under Section 20 of the ULC Act. True, certain reasons given by the High Court in concluding that the refusal of exemption was illegal can be dissociated from the question of acceptance of the proposals submitted by the Company backed up by the offer of CMS Ltd: but, the impact of the offer made by CMS Ltd. on the decision taken in regard to exemption under ULC Act is indelible. In fact, the holding of the Division Bench that the excess land ought to have been exempted was in the context of effectuating the said proposal accepted by the Court. This apparently, is the reason for passing a combined order. Therefore, we deem it appropriate to consider, in the first instance, whether the acceptance of the proposal involving the sale of the Company's surplus land to CMS Ltd. and the consequential directions issued by the High Court are supportable in law and, at any rate, whether the directions of the High Court can be given effect to at all at this point of time.

16. The aforesaid question calls for a discussion on the jurisdiction of the Court to pass an order approving the proposed sale as well as the propriety of such order. Coming to the first aspect, it is difficult to comprehend under what jurisdiction the Court had passed the order and issued the directions referred to supra. The High Court did not refer to any provision of the Companies Act under which the order in question was passed nor did the 2nd Respondent mention any provision under which the application was filed. The only provision which could possibly be invoked to pass an order of this nature is Section 394 read with Sections 391(1) and 392 of the Companies Act. But, there is a definite procedure prescribed for sanctioning a scheme or arrangement sought to be entered into with the creditors and for facilitating the revival of the Company. Various steps required to be taken by the Court are enumerated in Sections 391 to 393. Section 394A obligates the Court to give notice of every application under Sections 391 or 394 to the Central Government and the Court shall take into consideration the representation, if any, made by the Government before passing the order. Admittedly, this was not done. None of the creditors except the secured creditor, namely, the United Bank of India and Eastern Coal Agency, which filed the winding up petition, were involved in the so called arrangement or scheme. It does not appear that the latest financial position or the report on the accounts of the Company was placed before the Court as required by the proviso to Section 391(2). Though the Court was exercising special jurisdiction under the Companies Act, the relevant provisions were completely disregarded and the Court was only guided by its own notions of justice. The pre-requisites laid down under the Companies Act for passing the order under Sections 391 or 394 cannot be treated as empty formalities which can be thrown to winds at the whim of the Judge. The most objectionable part of the impugned order is to consider one or two offers placed before the Court by the company without giving due publicity. If the peculiar

circumstances of the case required that the normal procedure of calling for bids through advertisement or other means of publicity was to be dispensed with, the Court should have at least recorded reasons for the same. But, nothing of that sort was done. The Division Bench should have acted with the awareness that there could be no arbitrary selection of the prospective purchaser, even assuming that an order for sale could be lawfully made. Above all, if the purpose was to rehabilitate or revive the Company, definite proposals for revival should have been insisted upon and the High Court should have passed appropriate orders to ensure that the industry was put back on its wheels and started the production within a time frame, but, the only direction given in the order was to pay the amount of one crore or so to the 2nd Respondent-Company ostensibly for the purpose of restarting the industry. How to ensure proper utilization of that money - nothing is mentioned in the order. No provision for monitoring the revival has been made. At the same time all the pending proceedings were terminated. There can be no doubt that the Division Bench out-stepped the limits of its jurisdiction and passed orders of extra-ordinary nature.

17. The other important reason why the impugned order of the Division Bench cannot be sustained is the subsequent developments that have taken place. It appears that CMS Ltd. (6th Respondent) is no longer interested in the deal. They have not entered appearance before this Court though notice was served. The learned counsel for the 2nd Respondent-Company is not in a position to say that CMS Ltd. is still interested to purchase the land. Secondly, the learned counsel for United Bank of India has made it clear that the bank is no longer agreeable to abide by the terms agreed to earlier under which the bank had to receive Rs. 1.80 crore in full settlement of their claim. The learned counsel appearing for the Bank has contended with justification that it would be imprudent on the part of the Bank to now accept the sum which was offered about 7 years back. The accumulated interest since then would be almost double the amount offered to the Bank in the year 1996. The learned counsel further made it clear that the Bank would like to remain outside the winding up proceedings and pursue the suit filed as long as back in 1992. In view of these two developments we are of the view that the substratum and underlying basis of the order under appeal has disappeared and it is no longer possible to give effect to the directions given by the Division Bench in the Company Appeal. For all these reasons, the order passed in the Company Appeal is liable to be set aside.

18. The Company Petition No. 90 of 1992 will be restored to the file of High Court and the learned Company Judge will be free to deal with the Petition and the applications, if any, filed therein in accordance with law.

19. As already observed, the order of the High Court in regard to grant of exemption under Section 20 of the U.L.C. Act being in a way inter-related to the approval of the sale of vacant land, should also fall along with the order passed in purported exercise of jurisdiction under the companies Act. That apart, there is an additional reason why we are inclined to set aside the order of the High Court on this aspect. The High Court did not consider the relevance and effect of the guidelines issued by the State Government in regard to the exercise of power under Section 20 vis-a-vis excess land held by sick industrial units. The High Court was not justified in describing them as 'unknown guidelines', because the orders containing the guidelines were very much on the record and they were adverted to in the pleadings etc. We are not expressing any view on the question whether the application under Section 20 of ULC Act should be dealt with solely from the point of view of the guidelines. We are also refraining from expressing any view on the question of validity of those guidelines in the light of Section 20. These are all questions to be decided by the High Court to the extent they are considered necessary and relevant for adjudication of the writ petition. Whether or not it is a fit case for grant of exemption at least in respect of part of the land so as to facilitate the

discharge of workers' salaries and statutory dues is also a matter which the High Court may consider, if necessary. It is, however, made clear that the pendency of proceedings under the companies Act shall not be construed to be a bar to give effect to the provisions of ULC Act in view of the overriding effect conferred by Section 42 of the Act.

20. Accordingly, we set aside the impugned order of the High Court in regard to its finding and declaration the point of exemption under Section 20 of ULC Act. Writ Petition 383 of 1997 shall be restored to the file of the High Court and the same be dealt with by a Division Bench expeditiously.

21. Both the appeals are allowed accordingly. We make no order as to costs.